

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

**TIMOTHY J. GAUTHIER AND GARTH
BACHMAN**, Trustees of Oregon and
Southwest Washington NECA-IBEW
Electrical Workers Audit Committee,

Plaintiffs,

v.

VITRO ELECTRIC, LLC, a Limited
Liability Company, and **JOHN VITRO**, an
individual,

Defendants.

Case No. 3:21-cv-00097-JR

ORDER

IMMERGUT, District Judge.

On June 28, 2021, Plaintiffs Timothy J. Gauthier and Garth Bachman filed an Amended Motion for General Judgment of Default. ECF 22. In the Amended Motion, Plaintiffs move to dismiss their third and fourth claims for relief and seek default judgment only as to their ERISA benefits claim and breach of contract claim related to the failure to pay certain funds and contributions under the collective bargaining agreement. *Id.* at 1–2; *see also* ECF 18 at 2. On

July 13, 2021, Magistrate Judge Jolie A. Russo issued her Findings and Recommendation (“F&R”). ECF 24. The F&R recommends that this Court grant the part of Plaintiffs’ Amended Motion seeking default judgment on the ERISA benefits claim and deny the part seeking judgment on the breach of contract claim. No party has filed objections.

DISCUSSION

Under the Federal Magistrates Act (“Act”), as amended, the court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). If a party objects to a magistrate judge’s F&R, “the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.* But the court is not required to review, de novo or under any other standard, the factual or legal conclusions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc). Nevertheless, the Act “does not preclude further review by the district judge, *sua sponte*” whether de novo or under another standard. *Thomas*, 474 U.S. at 154.

No party having filed objections, this Court has reviewed the F&R and accepts Judge Russo’s conclusions. The F&R, ECF 24, is adopted in full. Plaintiffs’ Amended Motion for General Judgment of Default, ECF 22, is GRANTED IN PART and DENIED IN PART. Plaintiffs should submit a proposed judgment against Defendant Vitro Electric for the Court’s signature which includes: (1) for Plaintiffs’ first claim for relief: \$49,085.30, liquidated damages of \$9,817.06, and interest through June 21, 2021, in the amount of \$2,767.57 (plus any additional accrued interest); (2) for Plaintiffs’ second claim for relief: \$6,971.93 plus interest on outstanding wage withholdings calculated pursuant to the formula prescribed by section 6621 of

the Internal Revenue Code; (3) attorney fees in the amount of \$8,509.50; and (4) costs in the sum of \$467.00.

IT IS SO ORDERED.

DATED this 4th day of August, 2021.

/s/ Karin J. Immergut
Karin J. Immergut
United States District Judge